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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,537	01/30/2004	Ruth Schaefer Gayde	LUTZ 2 00240	6580
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FAY SHARPE/LUCENT 1100 SUPERIOR AVE SEVENTH FLOOR CLEVELAND, OH 44114			EXAMINER KANE, CORDELLA P	
			ART UNIT 2132	PAPER NUMBER
			MAIL DATE 03/12/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/768,537

**Applicant(s)**

GAYDE ET AL.

**Examiner**

CORDELIA KANE

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-16 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16 and 18-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicants arguments with respect to the rejection under 101 are persuasive. Paragraphs 27 and 31 of the instant specification disclose that the apparatus is hardware and software which embodiment is not software per se.
2. Applicant's, argument with respect to the rejection under section 112, have been fully considered and are persuasive.
3. Applicant's arguments filed December 21, 2007 regarding the art rejections have been fully considered but they are not persuasive. Applicant argues that Oommen does not disclose establishing a speech path between the user entity and the trusted entity. However Oommen teaches establishing a transmission path for data (column 4, lines 22-25). While speech is not specifically mentioned the mobile stations include phones (column 1, lines 12-13) and therefor speech is a type of data. Therefor establishing a speech path is taught by Oommen.
4. In response to applicant's argument that Kashino is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kashino and Oommen are from the same problem solving area, entity authentication. Kashino teaches registering a user (page 10, paragraph 103) while

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Oommen teaches registering a mobile station (column 4, lines 14-15). Therefore both references are drawn to registration of an entity.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

6. Claims 1, 2, 4, 5, 7, 10, 12, 13, 15, 16, 18, 21 and 23 – 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Paul Oommen's US Patent 6,993,328 B1.

Referring to claims 1, 12, 23 and 25, Oommen teaches:

- a. Signaling a trusted entity to initiate a repair session by a user entity requiring repair (column 4, lines 63-65).
- b. Obtaining user data on the user entity by the trusted entity (column 4, lines 14-20).
- c. Authenticating identity of the trusted entity and the user entity based on the user data (column 4, lines 34-37).
- d. Establishing a speech and data path between the user entity and the trusted entity (column 4, lines 22-25).
- e. Performing diagnostics on the user entity (column 5, lines 60-62).
- f. Obtaining repair data based on the diagnostics, and repairing the user entity based on the repair data (column 6, lines 6-9).
- g. Releasing the data and speech path (column 6, lines 6-9). Releasing the path is understood once the repair is complete.

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7. Referring to claims 2, and 13, Oommen teaches wherein the signaling comprises manipulating one of a soft key or a hard key on the user entity (column 4 line 65-column 5, line 1). Sending the objects to the mobile agents functions as manipulating a soft key.
8. Referring to claims 4, and 15, Oommen teaches that obtaining repair data comprises accessing a database (column 4, lines 39-41).
9. Referring to claims 5, 16, 24 and 26, Oommen teaches:
  - h. Signaling a trusted entity to initiate an update session by a user entity (column 4, lines 63-65).
  - i. Obtaining user data on the user entity by the trusted entity (column 4, lines 14-20).
  - j. Authenticating identity of the trusted entity and the user entity for the update session (column 4, lines 34-37).
  - k. Establishing a data path between the user entity and the trusted entity (column 4, lines 22-25).
  - l. Obtaining update data (column 4, lines 39-41).
  - m. Downloading update data (column 5, lines 14-16).
  - n. Executing the update data (column 4, lines 58-59).
  - o. Determine whether other update data should be downloaded (column 5, lines 12-13).
  - p. Restoring the data on the user entity (column 4, lines 58-59).
  - q. Releasing the data path (column 6, lines 6-9). Releasing the path is understood once the download is complete.

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10. Referring to claims 7 and 18, Oommen teaches that the signaling comprises manipulating one of a soft key or a hard key on the user entity (column 4 line 65-column 5, line 1). Sending the objects to the mobile agents functions as manipulating a soft key.

11. Referring to claims 10, and 21, Oommen teaches that obtaining update data comprises accessing a database (column 4, lines 39-41).

***Claim Rejections - 35 USC § 103***

12. Claims 3, 9, 14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oommen as applied to claims 1, 5, 12, and 16 above, and further in view of Kunio Kashino et al's US Publication 2001/0049664 A1. Oommen discloses all the limitations of the parent claims. Oommen does not explicitly disclose obtaining the user data from a database. However, Kashino discloses after receiving the user ID accessing a database to authenticate the user (page 11, paragraph 109).

13. Oommen and Kashino are analogous art because they are from the problem-solving area, entity authentication. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Oommen and Kashino before him or her, to modify Oommen to include the registration database of Kashino. The motivation for doing so would have been to store information related to the user to offer certain services to specific users only, as well as to authenticate them (page 10, paragraph 103).

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14. Claims 8, 11, 19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oommen as applied to claims 5 and 16 above, and further in view of Kirk Salomon's US Publication 2003/0041125 A1. Oommen discloses all the limitations of the parent claims. Oommen does not explicitly disclose an application server signaling the trusted entity, and providing access to the update data. However, Salomon discloses that the application server program causes the local application server computers to update the wireless application software programs on the wireless application server computers (page 1, paragraph 9).

15. Oommen and Salomon are analogous art because they are from the same field of endeavor, management of wireless systems. At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Oommen and Salomon before him or her, to modify Oommen to include the application server of Salomon. The motivation for doing so would have been to have a flexible wireless system that is quickly and easily capable of distributing different wireless software applications to different remote sites (page 1, paragraph 3).

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to CORDELIA KANE whose telephone number is (571)272-7771. The examiner can normally be reached on Monday - Thursday 8:00 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cordelia Kane/  
Examiner, Art Unit 2132

/Gilberto Barron Jr/  
Supervisory Patent Examiner, Art Unit 2132